IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CASE NO.: **CWP No.8250 of 2005**
DATE OF DECISION: October 19, 2006

BHAKRA BEAS MANAGEMENT BOARD ...PETITIONER

VERSUS

CHAMAN LAL AND OTHERS ...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE ASHUTOSH MOHUNTA.
HON'BLE MRS. JUSTICE NIRMAL YADAV.

PRESENT: MR. D.S. NEHRA, SR. ADVOCATE
WITH MR. MUNISH BHARDWAJ &
MS. AMANDEEP KAUR, ADVOCATE FOR THE PETITIONERS.

MR. MANJEET PATHANIA, ADVOCATE
FOR RESPONDENT NO.1.

ASHUTOSH MOHUNTA, J.

The petitioners have filed this writ petition with a prayer to quash the orders dated 9.5.2003 (Annexure P-9) passed by the Estate Officer under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (hereinafter referred to 'the Public Premises Act') and the judgement dated 15.6.2004 (Annexure P-11) passed by the Addl. District Judge, Ropar (Appellate Officer under the Act) and have also prayed that a direction be issued to evict respondent No.1 from the property in dispute.

The Bhakra Beas Management Board (hereinafter referred to as 'the Board') who is the petitioner in the present case is the owner of quarter No.5-V Nangal Township and this premises was leased out Chaman Lal, respondent No.1 for a period of 1 year vide allotment dated 4.8.1973. As per Clause 4 of the lease agreement, the lessee could continue even after the expiry of the stipulated period of one year by mutual consent of the parties

concerned on the mutually agreed terms and conditions. A proviso was added thereto that after the expiration of the first year, the lease shall be deemed to be from year to year basis. Clause 8 of the agreement provided for termination of the agreement even before the expiration of the original period of one year of lease by the lessor-Board by giving one month's notice in writing to the lessee.

As there was a shortage of residential accommodation for using the Board's employees stationed at Nangal Township, therefore, the Board asked respondent No.1 to vacate the aforementioned quarter No.5-V, Nangal Township in terms of the lease agreement. Respondent No.1 was also asked to vacate the premises within a period of 2 months. However, as the respondent did not vacant the premises, therefore, the lease agreement was cancelled on 5.6.1990, and a petition was filed before the Estate Officer, Bhakra Beas Management Board for eviction of respondent No.1 under the Public Premises Act.

Reply was filed by respondent No.1-Chaman Lal wherein it was averred that the suit premises is not a public premises under the Public Premises Act and that the property was not owned by the Board but it belongs to the State of Punjab. It is further averred that notice for eviction was contrary to the instructions dated 14.1.1992, issued by the Ministry of Urban Development, Government of India. The petitioner-Board led the evidence of Manvinder Singh, SDO, Enforcement, Sub Division Nangal Township, to prove the case of the petitioner with regard to lease of quarter No.5-V, Nangal Township by the Board to respondent No.1. It was also stated by this witness regarding the allotment of Shop No.18 in Nangal Township to respondent No.1. He also deposed that the lease of quarter

No.5-V, Nangal Township was terminated by the Board. Respondent No.1 examined himself as a witness wherein he admitted in his cross-examination that he was allotted shop-cum-residence No.18 in the Main Market in the Nangal Township by the Board which is a shop-cum-residence. It was also averred by him that as per the Instructions of Ministry of Urban Development, Government of India dated 14.1.1992, the provisions of Public Premises Act should be used primarily to evict absolutely illegal occupants of the public premises or unauthorized sub-letees or employees who have ceased to be in their service whereas, respondent No.1 does not fall in any of the above categories. The Estate Officer vide his order, Annexure P-9 dated 9.5.2003, held that respondent No.1 cannot be declared as unauthorized occupant of the quarter in question and accordingly, dismissed the eviction petition. The petitioner filed an appeal before the Addl. District Judge, Rupnagar who also vide his judgement dated 15.6.2004, dismissed the appeal.

Sh. D.S. Nehra, learned Sr. Advocate, counsel for the petitioner has vehemently argued that as per Clause 8 of the Lease Deed, the Board was authorized to terminate the lease by giving one month's notice to respondent No.1 i.e., the lessee. It has been argued that the premises in question were required by the petitioner-Board for the public purpose namely to accommodate their employees. Learned counsel has contended that once the lease deed stood terminated then respondent No.1 was duty bound to vacate the same and in the event of not vacating the premises, the Estate Officer as well as the Addl. District Judge ought to have allowed the petition filed by the petitioner and should have ordered the eviction of respondent No.1.

It was next argued by Sh. Nehra, that Internal Instructions of Ministry of Urban Development, Government of India dated 14.1.1992, which have been relied upon by the Courts below were neither an enactment not a Rule or Regulation and could not override the specific provisions of Public Premises (Eviction of Unauthorized Occupants) Act, 1971. Learned counsel has relied on the judgement in *Ashoka Marketing Limited* vs. *Punjab National Bank*, AIR 1991 SC 855, wherein it has been held that the premises belonging to organizations like the petitioner-Board are public premises and can be got vacated under the provisions of Public Premises Act on termination of lease or licence and that the Internal Guidelines of the Ministry of Urban Development, Government of India cannot override the provisions of the Act.

Counsel for the respondents has, however, argued that there is nothing on record to show that there was any shortage of accommodation for the employees of the Board and thus, the issuance of notice of eviction was mala fide. It was contended that the notice was issued to get the premises vacated whereas, admittedly the petitioner has withdrawn petitions against various other similarly situated persons. It is contended that the petitioner has adopted a pick and choose method. Strong reliance has been placed on the Instructions of the Ministry of Urban Development, Government of India.

We have heard the counsel for the parties at length. The relevant Clause 4 & 8 of Lease Agreement dated 4.8.1973, Annexure P-1 are reproduced as under:-

"Clause 4. The lease shall commence on and from the 4.8.1973 and the rent for the first month shall be due and

payable on the date. The lease is granted for a period of one year but if by mutual consent or forbearance, it shall be allowed to continue in force after the expiry of the said period of one yea, then subject to such modifications (if any) as the lessor and lessee may in writing mutually agree to the terms and conditions of this lease shall continue to operate and shall have full force and effect.

PROVIDED that in respect of any period after the expiration of the first year during which the lease shall continue in force, it shall be deemed to be a lease from year to year."

"Clause 8. Should the building, at any time before the expiration of the original period (one year) of this lease be required by the Lessor for any public purpose, he may, by giving to the lessee one month's notice in writing through the Executive Engineer, Determine this lease and the lessee shall, on expiration of the term of the notice peaceably vacate and give up possession of the building.

PROVIDED that upon such determination of the lease of the lease and peaceable surrender by the lessee of possession (but not otherwise) the Lessee shall be entitled to have refunded to him a proportionate part of any rent paid in advance for any unexpired period for which such rent has been paid.

PROVIDED further that the decision of the Superintending Engineer as to the amount of any refund to be

awarded under this clause, shall be final and binding on the parties."

As per Clause 8 of the Lease Deed the lesser, could by giving 1 month's notice in writing through the Executive Engineer terminate the lease. On expiration of the terms of the notice, the lessee was liable to vacate and give up the possession of the building. It is thus, clear that respondent No.1 was bound by the terms and conditions of lease and as notice had been issued by the Board on 25.5.1990, to respondent No.1 calling upon him to vacate the said quarter on account of the fact that there was acute shortage of residential accommodation for the Board's own employees who had to wait for nearly 5 to 10 years for allotment of accommodation, therefore, respondent No.1 was liable to vacate the said premises on expiry of the term of the notice. Respondent No.1 was bound by the terms and conditions of the Lease Deed and the Courts below ought to have ordered the eviction of the petitioner. Both the Courts below have given an undue weightage to the Instructions dated 14.1.1992, issued by the Ministry of Urban Development, Government of India. These Instructions were mere guidelines and could not override the provisions of the Public Premises Act. The petitioner was very well within its right to seek eviction of respondent No.1 as per terms and conditions of the Lease Deed. If a person is in illegal occupation, the Board has the right to terminate the lease by giving notice which was done in the present case and thus, they were entitled to take possession of the premises from respondent No.1. A perusal of the eviction petition clearly shows that eviction was not sought for any profit motive but the premises in dispute was required for allotting the same to the employees of the Board as there was shortage of residential accommodation.

It is, thus, clear that the premises was required by the petitioner for a public purpose. We, therefore, hold that the Guidelines dated 14.1.1992, cannot override the provisions of the Public Premises Act, and the Board could seek eviction of a person who was in unauthorized occupation of its premises.

In view of the fact that the lease had been terminated by the petitioner-Board, therefore, after the termination of lease, respondent No.1 had become unauthorized occupant of the premises in dispute and therefore, the Estate Officer was clearly in error in not ordering his eviction from the demised premises. The appellate authority has also committed the same error, therefore, both the orders cannot be sustained in the eyes of law and accordingly, we quash the orders, Annexure P-9 passed by the Estate Officer and Annexure P-11, passed by the Addl. District Judge, Rupnagar and allow this writ petition. As the lease agreement stood cancelled in the year 1990 itself, therefore, after that respondent No.1 has no right to continue on the premises in question and he has become unauthorized occupant thereof and order that respondent No.1 be evicted from the premises in dispute. He is, therefore, directed to hand over the vacant possession of quarter No.5-V, Nangal Township within a period of 3 months from the date of receipt of certified copy of this order. There shall, however, be no order as to costs.

(ASHUTOSH MOHUNTA)
JUDGE

October 19, 2006
Gulati

(NIRMAL YADAV)
JUDGE